



California Fair Political Practices Commission

May 19, 1989

Lester J. Marston
Rapport & Marston
200 Henry Street
P.O. Box 488
Ukiah, CA 95482

Re: Your Request for Advice
Our File No. A-89-223

Dear Mr. Marston:

This letter confirms the telephone advice which was given to you on May 5, 1989. You requested advice on behalf of Mr. Herbert Giese concerning application of the conflict-of-interest provisions of the Political Reform Act (the "Act")¹ to his duties as a member of the Willits City Council. The following advice is based upon the facts provided in your letters of April 11, 1989 and April 20, 1989.

QUESTION

Under the Act, must Mr. Giese disqualify himself from participating in a decision regarding a use permit for the Harwood Energy Corporation, since both he and the Harwoods employ Ms. Rowland?

CONCLUSION

Mr. Giese may participate in a decision regarding a use permit for the Harwood Energy Corporation. Based on the facts provided, neither Mr. Giese nor Giese Realty has a financial interest in Ms. Rowland.

FACTS

Mr. Herbert Giese is a member of the Willits City Council, and will be asked to vote on a use permit authorizing Harwood

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

Energy Corporation to operate a cogeneration plant within the City of Willits.

Mr. Giese is the owner of Giese Realty. He has two contracts with Ms. Rita Rowland, a real estate agent. The first contract is a broker-agent independent contractor employment contract. Under this contract, Mr. Giese, a broker, employs Ms. Rowland, an agent, to list and sell real estate. If Ms. Rowland sells any property listed with Giese Realty, the commission is paid directly to Mr. Giese, who then pays Ms. Rowland a percentage of the commission.

The second contract is a managing broker agreement. As of January 1, 1988, Ms. Rowland assumed the responsibility of manager of Giese Realty, managing all activities relating to real estate and real estate sales persons. As compensation for these duties, Ms. Rowland is paid 10 percent of the gross commissions received by Giese Realty.

For the last 12 months, Ms. Rowland has also been employed by Harwood Energy Corporation, which is owned by Morris and Bud Harwood. She is a real estate consultant and is paid a salary of \$1,000 a month. She handles a variety of real estate matters, which include evaluating and communicating purchase offers to the Harwoods, reviewing and obtaining copies of documents, keeping current records on all the properties and updating the property taxes. In the last 12 months, Ms. Rowland has not acted as the real estate agent for any sales on behalf of the Harwoods and therefore has not earned any commission income.

The work that Ms. Rowland performs for the Harwoods is done primarily at their office, which is about five blocks from Giese Realty. However, on occasion she reviews documents and makes phone calls on behalf of the Harwoods from the Giese Realty office. All such calls are billed to the Harwoods.

The Harwoods' properties are not listed with Giese Realty, and none of Giese's real estate agents have sold any of the Harwoods' properties within the last 12 months. None of the income that Ms. Rowland has received under her written employment contract with the Harwoods has been paid to Mr. Giese.

ANALYSIS

The Act prohibits a public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. (Section 87100.) A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his immediate family or on, among other things:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(Section 87103.)

Mr. Giese may not participate in a decision if it is reasonably foreseeable that the decision will have a material financial effect on any business entity in which he has an interest or on any person or entity which was a source of income to him within the 12 months preceding the decision. (Section 87103(a), (c) and (d).)

The question implicit in your letters concerns Ms. Rowland's dual employment relationship with both Mr. Giese and the Harwoods, and if this creates a conflict of interest which would prohibit Mr. Giese from voting on the Harwood Energy Corporation use permit. According to your April 20, 1989 letter, Ms. Rowland was not the real estate agent for any sales on behalf of the Harwoods, and none of the income that Ms. Rowland received from the Harwoods was paid to Mr. Giese. Therefore, the Harwoods are not a indirect source of income to Mr. Giese under Section 87103(c).

Furthermore, the Harwoods are also not a source of income to Mr. Giese since none of the Harwoods' properties are listed with Giese Realty and none of the Giese real estate agents have sold any of the Harwoods' properties within the past 12 months.

We must then determine if Ms. Rowland is a source of income to Mr. Giese under the broker-agent independent contractor employment contract. Regulation 18704.3 defines sources of commission income for both real estate brokers and real estate agents. Regulation 18704.3(c) provides as follows:

(c) The sources of commission income in a specific sale or similar transaction include for each of the following:

* * *

(2) A real estate broker:

(A) The person the broker represents in the transaction;

(B) If the broker receives a commission from a transaction conducted by an agent working under the broker's auspices, the person represented by the agent;

(C) Any brokerage business entity through which the broker conducts business; and

(D) Any person who receives a finder's or other referral fee for referring a party to the transaction to the broker, or who makes a referral pursuant to a contract with the broker.

(3) A real estate agent:

(A) The broker and brokerage business entity under whose auspices the agent works;

(B) The person the agent represents in the transaction; and

(C) Any person who receives a finder's or other referral fee for referring a party to the transaction to the broker, or who makes a referral pursuant to a contract with the broker.

According to the regulation, Mr. Giese is a source of income to Ms. Rowland, but she is not a source of income to him.


Therefore, Ms. Rowland's dual employment relationship with both Mr. Giese and the Harwoods does not present Mr. Giese with a financial interest which would affect his participating in or making any decisions regarding the Harwood Energy Corporation use permit.

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Page 5

If you have any further questions regarding this matter,
please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel

By:  Jill R. Stecher
Counsel, Legal Division

KED:JRS:plh

LAW OFFICES OF
RAPPORT & MARSTON
AN ASSOCIATION
OF
SOLE PRACTITIONERS

DAVID J. RAPPORT
LESTER J. MARSTON

FILED
APR 13 7 29 AM '89

200 Henry Street
P.O. Box 488
Ukiah, Ca. 95482
(707) 462-6846

April 11, 1989

Diane M. Griffiths, General Counsel
Fair Political Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, California 95804-0807

RE: Request for Advice Letter
Our File No. W-2.7

Dear Ms. Griffiths:

I am writing to you on behalf of my client, Herbert Giese, who is a member of the Willits City Council. On May 8, 1989, Mr. Geise will be asked to vote on a use permit authorizing Harwood Energy Corporation to operate a cogeneration plant within the City of Willits. Harwood Energy Corporation is owned by Morris and Bud Harwood.

Mr. Giese is the owner of Giese Realty. In that capacity he contracts with independent real estate brokers. One of those brokers is Rita Rowland.

Under Ms. Rowland's contract with Mr. Giese, she pays him 10% of the gross profit that she receives from real estate sales made through Mr. Giese's office. Under her contract she is entitled to utilize Mr. Giese's office and offer property for sale under the listing of Giese Realty.

Within the last 12 months Ms. Rowland has been employed by the Harwoods to assist them in a variety of real estate matters. These real estate matters have included anything from obtaining copies of documents such as deeds of trusts or foreclosure notices to things as simple as taking documents to the Harwoods for their signature. None of the work that Ms. Rowland has performed on the Harwood's behalf has included real estate sales. Furthermore, Ms. Rowland has never paid Mr. Giese any money or compensation for any of the work that she has performed on behalf of the Harwoods.

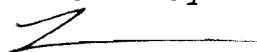
I am writing to you now on behalf of Mr. Giese to request that you render an opinion to Mr. Giese as to whether or not he has a conflict of interest under the Political Reform Act which prohibits him from voting on the Harwood use permit. Since the vote on this item will take place on or about May 8th or 9th, I

Diane M. Griffiths, April 11, 1989, Page 2

would appreciate it if you could render an opinion on or before that date.

If you need any additional assistance in order to act on this request, please do not hesitate to give me a call.

Yours very truly,



LESTER J. MARSTON
City Attorney

LJM/le
cc: Herb Giese

LAW OFFICES OF
RAPPORT & MARSTON
AN ASSOCIATION
OF
SOLE PRACTITIONERS

DAVID J. RAPPORT
LESTER J. MARSTON

April 11, 1989

200 Henry Street
P.O. Box 488
Ukiah, Ca. 95482
(707) 462-6846

Diane M. Griffiths, General Counsel
Fair Political Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, California 95804-0807

RE: Request for Advice Letter
Our File No. W-2.7

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Diane M. Griffiths, April 11, 1989, Page 2

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If you need any additional assistance in order to act on this request, please do not hesitate to give me a call.

Yours very truly,



LESTER J. MARSTON
City Attorney

LJM/le
cc: Herb Giese



California Fair Political Practices Commission

April 14, 1989

Lester Marston
Rapport & Marston
P.O. Box 488
Ukiah, CA 95482

Re: Letter No. 89-223

Dear Mr. Marston:

Your letter requesting advice under the Political Reform Act was received on April 13, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jill Stecher an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script, reading "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh

Jun 15 1 28 PM '88

FRIENDS OF COASTAL OPEN SPACE/

YES ON PROPOSITION C

P.O. BOX 91840

SANTA BARBARA, CA 93190

May 30, 1988

Fair Political Practices Commission
428 J Street
Sacramento, CA 95814

Dear FPPC representative,

This letter is in regard to contributions our committee has received from Concerned Citizens to Save the Wilcox, an unincorporated association. We have reported contributions of \$7,930 from this committee on our Form 420 for the period ended May 21, 1988 (see pg 6 of 9).

Concerned Citizens to Save the Wilcox was awarded \$30,000 in settlement of a lawsuit with Santa Barbara Senior Housing Associates Inc. The settlement specified that the \$30,000 was to be used on a campaign for Proposition C. As of May 29, our committee has received \$7,930 from the fiduciary holding the settlement funds.

Our concerns are twofold. Firstly, we want to fully disclose the nature of the contribution on our campaign reports. If our method of disclosure is not complete, please let us know how to amend our report.

Secondly, we are concerned about our potential status as a sponsored committee as a result of receiving the contributions from Concerned Citizens to Save the Wilcox. At the present time those contributions represent 40% of our total cash receipts. If we receive more contributions the percentage could go up to 70% or more. Will you please respond to this concern?

Thank you for your help in these matters.

Sincerely,

Kathleen Modugno
Kathleen Modugno
Treasurer

Enclosure

MONETARY CONTRIBUTIONS RECEIVED
(CONTINUATION SHEET)
FORM 420 OR 490
(Amounts May Be Rounded To Whole Dollars)

PAGE 6 OF 9

STATEMENT COVERS PERIOD
FROM MARCH 18 THROUGH MAY 21

NAME OF CANDIDATE, OFFICEHOLDER OR COMMITTEE:
FRIENDS OF COASTAL OPEN SPACE / YES ON PROPOSITION C

I.D. NUMBER (IF COMMITTEE)
880981

DATE REC'D.	FULL NAME AND ADDRESS OF CONTRIBUTOR <small>(IF COMMITTEE, IN ADDITION TO COMMITTEE'S NAME AND ADDRESS, ENTER I.D. NUMBER OR, IF NO I.D. NUMBER HAS BEEN ASSIGNED, ENTER THE TREASURER'S NAME AND ADDRESS)</small>	OCCUPATION	AMOUNT	
		EMPLOYER <small>(IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)</small>	RECEIVED THIS PERIOD	CUMULATIVE TO DATE
3/24/88 5/10/88	KEVIN YOUNG 119 COOPER RD. SANTA BARBARA, CA 93109	Occupation: REAL ESTATE SALES Employer: HCLP-U-SELL	215	275
5/16/88	JENEY YOUNG 21 E. QUINTO SANTA BARBARA, CA 93105	Occupation: HOMEMAKER Employer:	250	250
4/11/88	KATE KINLEY GREGG	Occupation: N/A Employer: at time of filing	100	100
5/5/88 5/19/88	CONCERNED CITIZENS TO SAVE THE WILCOX - THROUGH ITS INTERMEDIARY: ENVIRONMENTAL DEFENSE CENTER-CLIENT TRUST ACT	Occupation: Employer:	7930	7930
		Occupation: Employer:		
		Occupation: Employer:		
		Occupation: Employer:		
		Occupation: Employer:		
		Occupation: Employer:		
		Occupation: Employer:		
SUBTOTAL			8555	



California Fair Political Practices Commission

June 17, 1988

Kathleen Modugno
Friends of Coastal Open Space/
Yes on Proposition C
P.O. Box 91840
Santa Barbara, CA 93190

Re: 88-223

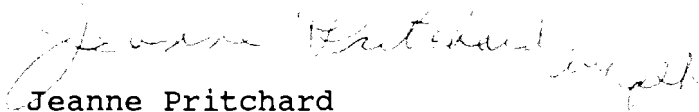
Dear Ms. Modugno:

Your letter requesting advice under the Political Reform Act was received on June 15, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5662.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to the information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,


Jeanne Pritchard
Chief
Technical Assistance and Analysis
Division

JP:plh